

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Eng Analyst: Angela Raygoza Bill Number: AB 1925
Related Bills: None Telephone: 845-7814 Introduced Date: February 12, 2008
Attorney: Tommy Leung Sponsor: Franchise Tax Board

SUBJECT: Failure To Resolve Outstanding Liabilities As Grounds For Revoking a Professional or Occupational License

SUMMARY

This bill would allow the Franchise Tax Board (FTB) to suspend occupational and professional licenses because of unpaid tax liabilities and notify the applicable licensing agency of the suspension.

PURPOSE OF THE BILL

The purpose of this Franchise Tax Board sponsored bill is to increase the effectiveness of the collection of delinquent taxes and to promote fairness among taxpayers.

EFFECTIVE/OPERATIVE DATE

If enacted in the 2008 legislative session, this bill would be effective and operative beginning January 1, 2009, and would apply to all tax liabilities assessed before, on, and after January 1, 2009.

POSITION

Support.

On November 28, 2007, the Franchise Tax Board voted 2-0 to sponsor the language included in this bill, with the representative from Department of Finance abstaining.

ANALYSIS**FEDERAL/STATE LAW**

Under both federal and state income tax laws, in general, if taxpayers have delinquent tax amounts, a tax lien automatically arises by operation of law for that amount, known as a statutory tax lien. A statutory tax lien is a claim upon real and personal property for the satisfaction of a tax debt. For federal purposes, the statutory tax lien exists as long as the delinquency exists or until automatically released ten years after a tax is assessed.

Board Position:

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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department Director**Date**

Selvi Stanislaus

3/25/08

For state purposes, a statutory tax lien arises automatically when the debt becomes final and exists for ten years, unless the liability becomes satisfied or, if the debt remains unpaid, a Notice of State Tax lien is recorded. The recording of the notice provides notice to the world of the debt against all real and personal property belonging to the taxpayer and located in the California county where recorded.

Current state law authorizes FTB to use several collection tools to collect delinquent tax liabilities:

- An Order to Withhold (OTW) can be issued to any third-person in possession of funds or properties belonging to the debtor, for example vacation trust funds, interest, financial assets, and 1099 miscellaneous payors. Upon receipt of an OTW, the entity notified is required to submit to the department all cash or cash equivalents due the debtor that will satisfy the amount of the OTW.
- A warrant can be issued to seize property and convert it to cash to satisfy a debt. Warrants are enforced by a marshal. The most common use of the warrant is to seize and sell vehicles.
- An Earnings Withholding Order for Taxes (EWOT) is used to collect delinquent tax liabilities for which a tax lien is in effect. An EWOT is a continuing wage garnishment based on a percentage of a debtor's earnings, not to exceed 25% of disposable income.

Current state law specifies that the Contractor's State License Board (CSLB) may refuse to issue, reinstate, reactivate, suspend, or renew a contractor's license for the failure of a licensee to pay state taxes and any fees that may be assessed by the CSLB, the Department of Industrial Relations, the Employment Development Department, or the FTB.

Current state law also authorizes professional license denial and suspension for failure to pay court-ordered child support debt. The local child support agencies compile a list for the Department of Child Support Services (DCSS) of obligors who are less than 30 calendar days in arrears in making their child support payments. DCSS reviews the list to verify the information is accurate and then sends the list of obligors to the various licensing boards. Once the list is received, those boards immediately send a 150-day compliance letter to the obligor. If the obligor fails to comply within the 150-day timeframe and the licensing board fails to receive a release letter from the local child support agency, the occupational, professional, or driver's license is suspended by the licensing board.

Under current state tax law, FTB is prohibited from disclosing any confidential taxpayer information unless an exception to the general disclosure law specifically authorizes the disclosure.

Current state law provides that the California Supreme Court may suspend or disbar an attorney from practice for an act of professional misconduct or convicted of serious crimes.

PROGRAM BACKGROUND

Current data indicates that there are over 25,000 delinquent taxpayers that possess an occupational or professional license. The department is unable to use its most effective collection tools, namely EWOTs, OTWS, and warrants, to collect delinquent liabilities from individuals who operate on a cash basis because of the lack of third-party reporting on transactions such as commissions, rents, and payment for services provided.

THIS BILL

This bill would allow FTB to suspend an occupational or professional license because of unpaid income tax liabilities. FTB would suspend a license only after the following have been provided to the debtor:

- Notice of State Income Tax Due,
- Past Due Notice,
- Final Notice Before Levy,
- OTW is issued (if debtor's bank information is available to FTB),
- Notice of State Tax Lien (issued when a state tax lien is recorded),
- 60-day preliminary suspension notice.

This bill would allow FTB to disclose to the licensing boards the reason for the suspension--unpaid taxes.

This bill specifies that FTB staff would provide a hearing for license holders who would experience a financial hardship as a result of the suspension.

This bill would define the following:

- "Hardship" means financial hardship, as determined by FTB, where the taxpayer is financially unable to pay any part of their taxes including penalties, interest, and applicable fees and is unable to qualify for an installment payment arrangement pursuant to Section 19008 of the Revenue and Taxation Code.
- "License" includes certificate, registration, or any other authorization to engage in a business or profession issued by a state governmental licensing entity.
- "Licensee" means any entity authorized by a license, certificate registration, or other authorization to engage in a business or profession issued by a state governmental licensing entity.
- "State governmental licensing entity" means any entity included in Sections 101, 1000, or 19420 of the Business and Professions Code (approximately 41 licensing entities), the Office of Attorney General, the Department of Insurance, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing a person to engage in a business or profession. "State governmental licensing entity" excludes the Department of Motor Vehicles. Please see the Appendix for a list of licenses that would be affected by this provision.

This bill would also specify that upon enactment, CSLB's current authority to receive state income tax delinquency information from FTB and to suspend those licensees with FTB income tax delinquencies would be eliminated.

Implementation of this bill would be contingent upon funding approval.

OTHER STATES' INFORMATION

Illinois, Massachusetts, Minnesota, Oregon, and Wisconsin tax laws provide for suspension of licensees for unpaid personal income tax liabilities. The revenue department for each of those states directs the licensing authority to suspend the licenses.

Missouri income tax laws provide that the revenue department can suspend a professional or occupational license for delinquent income tax liability. The revenue department suspends the license and then notifies the licensing board of the suspension of the license holder.

Recently, *Pennsylvania* enacted an information exchange program to ensure that individuals and businesses licensed by the state pay their state income, sales and use, cigarette, liquor, and property taxes. The revenue department will notify a licensing board when it determines that an applicant or licensee has a state tax delinquency. The licensing board will deny or suspend a license for failure to comply with state tax laws.

Florida, Michigan, and New York do not have statutory authority to suspend business and professional licenses for delinquent tax liabilities.

FISCAL IMPACT

Staff estimates a one-time cost of approximately \$2.4 million (27.4 PYs) to program, develop, and test a new process within existing systems and add collection staff to review, process, and suspend accounts that have been matched to licensees. Staff estimates on-going annual costs of approximately \$1.1 million (12.4 PYs) for mailing notices and responding to taxpayer inquiries resulting from those notices. This new function would be operative in the latter part of the 2009-10 fiscal year. Implementing this bill would be contingent upon funding approval.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gains:

Estimated Revenue Impact of AB 1925 Effective On or After January 1, 2009 Enactment Assumed After June 30, 2008 (\$ in Millions)			
Suspend Occupational Licenses	2008-09	2009-10	2010-11
	+\$16	+\$29	+\$13

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill would depend on the number of delinquent taxpayers that possess an occupational or professional license. This estimate was calculated using the actual account balances of the department's accounts receivables for the affected taxpayers, excluding accounts in bankruptcy and installment agreements. Taxpayers subject to this proposal are those with an outstanding liability of \$1,000 or more and have owed that debt for one year or more.

It is estimated that 17,200 taxpayers with occupational and professional licenses will enter the collection process annually. Of the 17,200 taxpayers, it is estimated 38%, or 6,600, are expected to pay their delinquent debts upon notice from FTB. Current departmental data indicates the average payment amount for compliant taxpayers would be approximately \$2,000, resulting in an annual revenue increase of approximately \$13 million ($6,600 \times \$2,000 = \13.2 million). The average payment amount was calculated by the amount of payments made in response to filing enforcement notices.

Current departmental data also indicates unresolved cases of approximately 25,000 delinquent taxpayers with occupational and professional licenses in the collection process. Based on the 25,000 taxpayers, it is estimated that nearly 9,500 taxpayers would comply upon notice from FTB resulting in a revenue increase of \$19 million in the first year ($\$2,000 \times 9,500 = \19 million). The revenue for fiscal year ending 2009-10 is estimated to total \$32 million ($\19 million + $\$13$ million). It is assumed that 50 percent of the \$32 million would be collected in fiscal year 2009-10, reducing revenue to \$16 million. The remaining \$16 million from fiscal year 2009-10 would be collected in 2010-11, in addition to the \$13 million that is assessed annually, for a revenue impact of \$29 million ($\16 million + $\$13$ million = $\$29$ million) in 2010-11. Thereafter, the annual fiscal impact of \$13 million would be collected. Because the revenue from this bill would be from tax liabilities from prior years, the estimates in the table are all accrued back one year.

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APPENDIX
Governmental Licensing Entities
(Licensing Boards that are effected by this bill)

1. Section 101 of the Business and Professions Code

The Dental Board of California
The Medical Board of California
The State Board of Optometry
The California State Board of Pharmacy
The Veterinary Medical Board
The California Board of Accountancy
The California Architects Board
The Bureau of Barbering and Cosmetology
The Board of Professional Engineers and Land Surveyors
The Contractors' State License Board
The Bureau for Private Postsecondary and Vocational Education
The Structural Pest Control Board
The Bureau of Home Furnishings and Thermal Insulation
The Board of Registered Nursing
The Board of Behavioral Sciences
The State Athletic Commission
The Cemetery and Funeral Bureau
The State Board of Guide Dogs for the Blind
The Bureau of Security and Investigative Services
The Court Reporters Board of California
The Board of Vocational Nursing and Psychiatric Technicians
The Landscape Architects Technical Committee
The Bureau of Electronic and Appliance Repair
The Division of Investigation
The Bureau of Automotive Repair
The State Board of Registration for Geologists and Geophysicists
The Respiratory Care Board of California
The Acupuncture Board
The Board of Psychology
The California Board of Podiatric Medicine
The Physical Therapy Board of California
The Arbitration Review Program
The Committee on Dental Auxiliaries
The Hearing Aid Dispensers Bureau
The Physician Assistant Committee
The Speech-Language Pathology and Audiology Board
The California Board of Occupational Therapy
The Osteopathic Medical Board of California
The Bureau of Naturopathic Medicine

2. Section 1000 of the Business and Professions Code

State Board of Chiropractic Examiners

3. Section 19420 of the Business and Professions Code

California Horse Racing Board
